

Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF,
BRIANA D. GAGE,

Plaintiffs,

v.

CITY OF SEATTLE, et al.,

Defendants.

No. 2:23-cv-01392-JNW

DEFENDANT JUSTIN BOOKER'S
REPLY IN SUPPORT OF MOTION TO
DISMISS UNDER FRCP 12(b)(5)

NOTE ON MOTION CALENDAR:
JUNE 20, 2024

Defendant Justin O. Booker files this Reply in support of his pending Motion to Dismiss and asks this Court to dismiss Plaintiffs' Complaint against him for failing to properly serve him with the Summons and Amended Complaint pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(5). Defendant Booker acknowledges that Plaintiffs have sought an extension of time to respond to his motion. Dkt. #235. However, should this Court fail to grant the motion, Defendant Booker files this Reply in an abundance of caution. Should the Court grant Plaintiffs' motion, Defendant Booker respectfully reserves the ability to fully reply to any response brief subsequently filed.

I. REPLY

As noted in Defendant Booker's motion to dismiss, service by publication was not appropriate or in compliance with the statutory requirements. Under Federal Rule of Civil

1 Procedure 4(c)(1), Plaintiffs are “responsible for having the summons and complaint served within
 2 the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes
 3 service.” In this case, Plaintiffs have failed to comply with state law governing service. They do
 4 not state that they attempted to mail the Summons and Amended Complaint. *See* Dkt. #195. In
 5 fact, they do not describe any attempts at service of Mr. Booker at all. *Id.* Instead, they have relied
 6 upon service by publication. However, even that mode was accomplished improperly. Under
 7 Washington law, service by publication is allowed only when “the defendant cannot be found
 8 within the state, and upon the filing of an affidavit of the plaintiff . . . with the clerk of the court,
 9 stating that he or she believes that the defendant is not a resident of the state, or cannot be found
 10 therein, and that he or she has deposited a copy of the summons . . . and complaint in the post
 11 office, directed to the defendant at his or her place of residence, unless it is stated in the affidavit
 12 that such residence is not known to the affiant, and stating the existence of one of the cases
 13 hereinafter specified,” none of which are applicable in this matter. RCW 4.28.100. Plaintiffs’
 14 Affidavit does not meet those requirements. Accordingly, this matter should be dismissed against
 15 Mr. Booker.
 16
 17

18 DATED this 20th day of June, 2024.

19
 20 PACIFICA LAW GROUP LLP

21
 22 By /s/ Sarah S. Mack

Sarah S. Mack, WSBA #32853

23 *Attorney for Defendant Justin Booker*
 24
 25
 26
 27